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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/644,333

08/20/2003

Bernd Disse

I/1196-I-CI

6665

28501

7590

05/04/2006

EXAMINER

KIM, VICKIE Y

MICHAEL P. MORRIS
BOEHRINGER INGELHEIM CORPORATION
900 RIDGEBURY ROAD
P. O. BOX 368
RIDGEFIELD, CT 06877-0368

ART UNIT

PAPER NUMBER

1618

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/644333

08/20/2003

Bernd Disse

1/1196-LCI

EXAMINER

V. Kim

ART UNIT	PAPER
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1618

20060426

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Petition was granted in response to petition request for revival of abandonment filed 1/13/06. Thus, the last officen action is remailed hereinwith.(see attachment). It is noted that applicant is given a TIME PERIOD of ONE month from the mailing of this notice whthin which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abadonment.

**VICKIE KIM
PRIMARY EXAMINER**Vickie Kim
Primary Examiner
Art Unit: 1618



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Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 9-24-04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____
- ☐ 3. Amendments to the drawings: _____
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New) and (Not entered).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: claims 10-13 have wrong status identifiers.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/prenotice/office1ver.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given **ONE MONTH** from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this **ONE MONTH** time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a **TIME PERIOD** of **ONE MONTH** from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Legal Instruments Examiner (LIE)

Telephone No.



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FEB 28 2006

OFFICE OF PETITIONS

In re Application of	:	
Bernd Disse	:	
Application No. 10/644,333	:	DECISION ON PETITION
Filed: August 20, 2003	:	
Attorney Docket No. 1/1196-1-C1	:	

This is a decision on the petition under 37 CFR 1.181, filed January 13, 2006, to withdraw the holding of abandonment.

On October 15, 2004, the Office mailed a Notice of Non-Compliant Amendment, which set a one-month extendable period to respond. In the absence of timely reply, the application became abandoned on November 16, 2004. On December 14, 2005, the Office mailed a Notice of Abandonment.

In the present petition, the practitioner, Andrea D. Small, asserts that she did not receive the Notice of October 15, 2004. The practitioner states that a search of the file jacket and docket records reveals that the Notice was not received. In support of the assertion of non-receipt, the practitioner submits the following exhibits: (1) Exhibit A is a copy of the electronic List of Actions logged for the case where no log was entered for a Office communication dated October 15, 2004; (2) Exhibit B is a copy of all replies docketed for a date three months from the mail date of the non-received Notice, where no due date was generated for Office communication dated October 15, 2004; (3) Exhibit C is a mail log for the period starting October 15, 2004 through November 17, 2004, where no entry of an Office communication was made for the aforementioned case; and, (4) Exhibit D is a statement from practitioner's docket manager, Nancy O'Grady, indicating common practice at practitioner's office for mail log entries.

A review of the record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. To establish non-receipt of an Office communication, applicant must include a statement

from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g. if the practitioner has a history of not receiving Office actions).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner for the applicant submitted copies of mail logs and docket records where the Notice would have been entered had it been received and docketed. The practitioner attested to the fact that a search of the file jacket and docket records indicated that the Notice was not received. Furthermore, the docket manager provided an explanation of the docketing system. As applicant has presented the required showing, the petition to withdraw the holding of abandonment is granted.

As applicant has established non-receipt of the Notice of Non-Compliant Amendment of October 15, 2004, the Technology Center Art Unit 1618 is directed to re-mail the Notice of Non-Compliant Amendment and restart the period for reply.

This matter is being referred to Technology Center Art Unit 1618 for action consistent with this decision.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).